June 78

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MEMORANDUM FOR THE RECORD

FROM : [redacted]
Assistant General Counsel

SUBJECT : Training of Agency Employees at Academic Institutions; Disclosure Obligations

REFERENCES: [redacted]

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1. This memorandum addresses the question of whether there is any legal obligation to inform officials of academic institutions of an employee's affiliation with CIA when that employee is under cover and undertakes training at the institution under Agency financial sponsorship. Central Cover Staff has raised concerns with respect to a number of employees

under cover who are about to embark on college level training programs, including one at Harvard University. Currently, there is no such obligation, either on the part of the Agency or the employee, so long as such participation is not undertaken for the purpose of reporting on or influencing the activities of the institution or its members on behalf of the Agency. This position is not inconsistent with previous opinions of this Office on this general subject (see references A, B, C, and D).

2. Section 2-207 of Executive Order 12036 prohibits undisclosed participation on behalf of CIA in domestic organizations except as permitted by procedures established by the DCI and approved by the Attorney General. Training undertaken by an employee (under cover or not) on his own initiative and at his own expense, where he does not perform any services such as reporting for the Agency, does not appear to be restricted by section 2-207 because such training is not participation on behalf of the Agency. Further, it may be argued that this judgment should not change merely because the Agency financially sponsors the training and in the course of such sponsorship determines that the training is relevant to Agency employment in content and that an individual's academic performance is acceptable. In such circumstances, the interest of the Agency in the particular academic institution is, arguably, remote.* Nevertheless, for the purposes of this memorandum, it is unnecessary to rely on this argument because even if such training is considered participation on behalf of the Agency and therefore section 2-207 is applicable, disclosure need still not be required.

3. Until such time as the Attorney General approves procedures implementing section 2-207, E.O. 12036 specifically provides in section 4-106 that intelligence activities covered by those procedures may be conducted under the terms and conditions of E.O. 11905. That Order does not prohibit undisclosed participation in training programs at academic institutions unless such participation is for the purpose of reporting on or influencing its activities or members, see sections 5(b)(6) and 4(b)(9).** Nor do Agency regulations

*This argument would be more difficult to make if the Agency directed or nominated the employee to participate in a university training program.

**Section 5(b)(6) prohibits "[i]nfiltration or undisclosed participation within the United States in any organization for the purpose of reporting on or influencing its activities or members...." Section 4(b)(9) of E.O. 11905 provides that CIA sponsorship must be known to the appropriate senior officials of academic insttiutions when CIA enters into contracts and arrangements with such institutions to provide classified or unclassified research, analytical and developmental services and specialized expertise.

dealing with academic relations.*

4. Moreover, it is expected that the procedures approved by the Attorney General will permit such training without disclosure if the employee is under cover and the training is not undertaken for the purpose of influencing the academic institution or its members. Section 2-207 requires that the procedures must provide for disclosure in all cases "unless the Agency head or a designee approved by the Attorney General finds that non-disclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General." The procedures contemplated by this section, moreover, must assure, where non-disclosure is permitted, that, in this context, "no such participation...is undertaken for the purpose of influencing the activity of the organization or its members,"** and that the "type of participation...has been approved by the Attorney General and set forth in a public document." Draft procedures governing undisclosed participation in domestic organizations, which are defined as including academic institutions, have been prepared by CIA and sent to the Attorney General for his approval (see reference F). These procedures, which are unclassified and could be made available to the public or incorporated in another public document, specifically provide that "training or education relevant to CIA employment" and "maint[enance of] the cover of CIA personnel" are "deemed to be lawful and permissible" and that the DCI or DDCI could approve undisclosed participation

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*See [redacted] Academic Relations, approved by the DCI on 30 October 1977. Paragraph 3a of those procedures does provide that "[i]f an academic institution performs services for the Agency on an indirect basis...in some...manner [other than as a contractor or consultant to contractors] and...CIA participates in the selection or approval of the institution, then appropriate officials of the institution must be made aware of the Agency's involvement." This paragraph is obviously intended, however, to prevent CIA from doing indirectly what paragraph 3a does not permit CIA to do directly, namely entering contracts or other arrangements with academic institutions to provide research, analytical and developmental services and specialized expertise in furtherance of the Agency's mission without making known Agency sponsorship to appropriate officials. I have been advised by the attorney who prepared these regulations that they were not intended to cover the situation where the undisclosed presence of an Agency employee was solely for training purposes.

**The General Counsel has opined that this requirement must be followed even before implementing procedures are approved by the Attorney General because any procedures must be consistent with this substantive constraint. See Ref. E.

on a classified or such undisclosed participation were deemed essential to achieve a lawful purpose. In making such determinations the DCI or DDCI may take into account that the "cover of CIA employees...would be compromised or jeopardized if affiliation with CIA were disclosed...." See Paragraphs 1, 6, 7, 9, and 10 of the procedures. It is clear, therefore, that if the Attorney General approves these procedures and if the DCI or DDCI approves an exemption based on cover considerations, undisclosed participation in the form of Agency-sponsored training at academic institutions would satisfy the requirements of 2-207.*

5. Section 2-303 of E.O. 12036 does provide that undisclosed sponsorship by CIA of contracts or arrangements for the provision of goods and services with academic institutions in the U.S. is not permitted. See, also, reference E. However, this provision does not appear to have been intended to apply to undisclosed training at academic institutions; such training appears clearly intended to be covered, if at all, by section 2-207. To interpret section 2-303 otherwise would lead to an anomoly; the Attorney General could approve undisclosed participation at academic instutitions on behalf of the Agency for certain operational purposes, but could not approve mere attendance for purely educational purposes. Moreover, an absolute requirement that appropriate officials be notified could have unacceptable side effects--cover could be "blown" or the employee could have to forego attendance at the institution. In consonance with this interpretation of section 2-303, the draft procedures implementing that section submitted to the Attorney General specifically provide that "these procedures do not apply to the registration or attendance at an academic instiution by a CIA employee, who is not publicly acknowledged as such. That subject is governed by the Attorney General approved procedures relating to undisclosed participation in domestic organizations." See reference G.

6. Although the draft procedures implementing sections 2-207 and 2-303 have not been approved, as yet, by the Attorney General, they were approved by the DCI and the General Counsel and should be considered as the official Agency interpretations of these provisions. The Attorney General, of course, is entitled to disagree with these interpretations, and if he modifies the procedures before he approves them, we will have to comply with those modifications, even if it means that we would have to inform the institutions midway in the training. We have had no indication, however, that the Attorney General will disagree with our procedures.

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*Where an Agency-sponsored student is not under cover and there is no other basis for exempting disclosure, section 2-207 appears to impose an affirmative obligation on the student employee to disclose his affiliation to appropriate officials at the academic institution. Perhaps, this obligation could be satisfied by indicating Agency employment in an enrollment application.

In fact, we have discussed this matter with the Attorney General's staff who indicated that while they could not commit the Attorney General, they concurred in the results of our analysis, so long as the employees were advised that they were not to report on activities of the institution or its members or engage in operational activities on behalf of the agency, even on their own initiative.

7. In conclusion, there appears to be no legal reason which currently would compel disclosure to officials of an academic instititution when an Agency employee undertakes training at the institution under Agency financial sponsorship so long as the employee is under cover and he does not report on or influence the activities of the institution or its members on behalf of the Agency. In keeping with the Department of Justice suggestion, the employees should be advised of these prohibited activities. From a policy perspective, there may be arguments that appropriate officials of the academic institutions ought to be notified in a confidential manner, in these circumstances, particularly when, as in the Harvard case, unintentional disclosure may precipitate adverse reaction, perhaps even jeopardizing other legitimate undisclosed campus activities. Moreover, it may be that appropriate notification could be given in many cases without jeopardizing cover. However, I am aware of no official policy approved by the DCI which would prevent such undisclosed participation. Nevertheless, these policy concerns should be considered by the DCI or DDCI when one of them determines whether to exempt such activities from disclosure in accordance with the new procedures under section 2-207 once they become effective. Since the decision will ultimately have to be made at that level anyway, it may be advisable to seek their judgement now. Short of that, the policy followed by the Agency will have to be worked out between CCS and appropriate sponsoring components in consultation with OGC.* If conflicts cannot be resolved at this level the issues may have to be raised to the DD or DCI/DDCI level for resolution.

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